

# **MINUTES OF THE COMMISSION FOR HUMAN RIGHTS**

**OCTOBER 31, 2008**

**A regular meeting of the Commission for Human Rights was held in the agency conference room on Friday, October 31, 2008. Present at the meeting were Dr. John B. Susa, Rochelle Bates Lee, Camille Vella-Wilkinson, Alberto Aponte Cardona and Iraida Williams. Absent were Commissioners Nancy Kolman Ventrone and Alton W. Wiley, Jr. Dr. Susa called the meeting to order at 9:30 a.m.**

**A motion was made by Commissioner Cardona to approve the minutes of the September 26, 2008 meeting. The motion was seconded by Commissioner Vella-Wilkinson and carried.**

**Status Report: Michael D. Évora, Executive Director**

**A written report was handed out. All new information is in bold print.**

**The Director reported that Charles Newton is acting head of state EEO.**

**A motion was made by Dr. Susa to appoint Cynthia Hiatt, Legal Counsel, to be the agency's Public Ethics Officer. The motion was**

**seconded by Commissioner Cardona and all Commissioners were in favor.**

**Case Production Report – Attached**

**Aged Case Report - Attached**

**Outreach Report - Attached.**

**Commissioner Meeting -2- October 31, 2008**

**STATUS REPORT - COMMISSIONERS-**

**GENERAL STATUS: No report at this time**

**OUTREACH: Commissioner Cardona reported that Central Falls is**

looking for donations or volunteers to help feed about 400 families this year. He will get back to us with some information for the staff.

**STATUS REPORT - LEGAL COUNSEL, by Cynthia M. Hiatt and Francis Gaschen**

**LITIGATION: Report attached.**

**LEGISLATION: No discussion at this time.**

**REGULATIONS: No discussion at this time.**

**HEARING SCHEDULE: Discussed**

**DECISIONS: No discussion at this time.**

The meeting adjourned at 10.40 a.m. The next regular meeting of the Commission is scheduled for Friday, December 5, 2008 at 9:00 am.

**Respectfully Submitted,**

**Michael D. Évora**

## **Executive Director**

**Notes taken by: B. Ross**

### **EXECUTIVE DIRECTOR'S**

### **REPORT TO COMMISSIONERS**

**OCTOBER 31, 2008**

## **I. BUDGET**

**S = State/General Revenue; F = Federal (EEOC/HUD); T = Total**

	<b>FY 2009</b>	<b>FY 2009</b>	<b>FY 2009</b>	<b>FY 2010</b>
	<b>(Gov. Rec.)</b>	<b>(Enacted)</b>	<b>(Rev. Req.)</b>	<b>Request</b>
<b>S</b>	<b>991,659</b>	<b>991,659</b>	<b>991,659</b>	<b>868,444</b>
<b>F</b>	<b>391,309</b>	<b>391,309</b>	<b>403,813</b>	<b>406,615</b>
<b>T</b>	<b>1,382,968</b>	<b>1,382,968</b>	<b>1,395,472</b>	<b>1,275.059</b>

**On September 23, the Commission's Revised FY 2009 and FY 2010 Budget Requests were submitted to the Governor. A shortfall of \$82,643 in federal revenue is anticipated for FY 2009; consultation with our Budget Analyst reveals that this anticipated shortfall is likely due to the "scooping" of excess federal revenue at the end of FY 2008 to cover general revenue shortfalls. The Commission has requested a general revenue supplemental appropriation in this amount for FY 09.**

**The FY 2010 Request complies with the Governor's directive that general revenue funds be decreased by eight percent (8%), to a target amount of \$868,444. This amount is reached using the Budget Office's calculated current service cost for FY 2010 of \$943,961; in reality, to achieve the target amount, the agency must reduce its true current service cost for FY 2010 of \$1,008,196 by nearly 14%). In order to meet this target, the Commission would have to lay off two investigative staff members, or an equivalent thereof. We await word as to whether the Budget Office will recommend, and whether the Governor will ultimately adopt, the general revenue reduction for FY 2010.**

## **II. FEDERAL CONTRACTS**

**EEOC – For federal FY 2008 (ending 9/30/08), according to EEOC Project Director Marlene Toribio, we closed 248 co-filed cases. Our 2008 EEOC contract was for 246 cases.**

**HUD – For FY 09, according to HUD Project Director Angela Lovegrove, we have taken in 24 new housing charges, 21 of which are co-filed with HUD. Within this same time period, we have processed 23 housing charges, 20 of which were co-filed with HUD.**

### **III. PERSONNEL**

**No new information to report.**

### **IV. OUTREACH – Refer to attached report**

**On July 15, Tina Christy, Senior Compliance Officer, and Susan Pracht, Investigator, sent out letters to over 250 city and state departments and agencies offering information on the Commission's fair employment/fair housing education and outreach program. Several outreaches have been scheduled in response to this mailing.**

### **V. GENERAL STATUS**

**&#9679;Meetings with staff members – I continue to meet with individual investigative staff members on a monthly basis to monitor case production.**

**&#9679;Case Closures – Refer to attached report.**

**&#9679;Aged Cases – Refer to attached report. Progress continues to be made on decreasing the aged caseload. The Commission successfully reduced the aged caseload by 50% in federal FY 2008 (from 4 to 2 cases). For the first time in recent history, the**

**Commission entered a new federal fiscal year without adding any aged cases to the existing number.**

**&#9679;Public Ethics Officer – Per a memo issued on October 6, 2008 by the Governor’s Executive Counsel (GEC), pursuant to Governor’s Executive Order 03-01, each state agency must identify a Public Ethics Officer to serve as the official agency contact with the GEC and to ensure compliance with the state Code of Ethics. The Officer may be the Chairperson of the Commission or a designee; the Commission must notify the Governor’s Executive Counsel and the state Ethics Commission of its selection ASAP.**

**&#9679;Overall Case Inventory – The Commission had over 1000 cases in its inventory at the end of FY 98. We ended FY 08 with approx. 370 cases in inventory. As of 10/29/08, we had a total of 366 cases in inventory; 14 of those cases were pending assignment.**

**&#9679;Holiday Party – The Commission’s holiday party will take place on Friday, December 12, at 6 p.m. at the home of Angela Lovegrove (Rumford). The party will be catered; details to follow.**

**&#9679;Arbitration – On April 30, an arbitration hearing was held on the union grievance in respect to the nonpayment of union dues by Susan Pracht and Jason Flanders during the period in which they served as Interns (before they were employed by the Commission). The Arbitrator issued his decision on October 15. He found in favor**

of the Union, concluding that Susan and Jason ceased to be “interns” after they ceased to be college students, and that their status at the Commission prior to their hire as employees was more akin to temporary employees. As a result of the decision, “[t]he State will pay the Union “... either union dues or an agency service fee ...” whichever is less, for both individuals for said periods [post student-internship and pre-employment].”

&#9679;Letterhead – The new letterhead, reflecting the current Commissioners, is now in use.

Respectfully submitted,

Michael D. Évora

Executive Director

Attachments

To: Commissioners

From: Cynthia Hiatt and Frank Gaschen, Legal Counsels

Re: Litigation

Date: October 31, 2008

Recent developments are in bold.

**Aquidneck Island v. RICHR, et al.**

This suit was brought by the plaintiff against multiple parties, alleging that liens have been placed on its property improperly. All liens were against Norman Cardinale not Aquidneck. Case is moot now.



### **Atturio et al v. Évora**

**This is an appeal of a Commission decision that granted in part and denied in part a motion to quash a Commission subpoena. A briefing schedule had been established with the Superior Court. The respondents' brief was filed on October 6, 2008. The Commission brief is due on November 18.**

### **Babbitt v. Crescent Park Manor, et al.**

**The Commission intervened as a party plaintiff in this case. Discovery is on going. I called both attorneys for an update on this case. Received no response from either; court docket indicates nothing has been filed on case in a year. A discovery deposition is scheduled.**

### **Bagnall v. RICHR and WLWC et al.**

**The complainant appealed the Commission Decision and Order. The Commission filed the administrative record on April 12, 2006. On April 22, 2008, the complainant's attorney filed his brief. The parties had filed a stipulation that provides that the Commission and the respondent will file our briefs on or before August 29, 2008. The Commission's Brief was filed on August 27, 2008. WLWC and Ms. Bagnall signed a stipulation to extend the time for WLWC to file its brief to October 31, 2008. Another stipulation is circulating to extend the time for WLWC to file its brief to November 30, 2008.**

### **Gaffney v Town of Cumberland et al**

The respondent appealed the Commission decision. In November, 2007, Judge Savage remanded the Commission Decision for the Commission to determine how the Commission would evaluate the evidence, given the conclusions reached in her decision. Judge Savage also asked the Commission to re-assess its Order. Justice Savage suggested that the parties consider whether Mrs. Gaffney should re-apply for subdivision of her property, following the proper procedure. Counsel wrote to the attorneys for the parties, given them several alternative steps and asked them how they would like to proceed. The respondent's attorney said that it would like Mrs. Gaffney to re-apply for subdivision under certain conditions. The complainant's attorneys, for various reasons, did not respond to the Commission for some time. On May 27, 2008, the Commission received a copy of a letter from the complainant's attorney to the respondents' attorney. The letter was a settlement proposal from Mrs. Gaffney. Settlement was not effected. Mrs. Gaffney's attorney indicated that she might withdraw as counsel. On September 2, 2008, Commission Counsel asked her for a formal decision on whether she will withdraw and she said that she would notify the Commission within two weeks. The Commission did not receive word from the complainant's counsel. On October 24, 2008, Commission Counsel notified the parties that on January 5, 2009, the Commission would commence reconsideration of the decision in light of Justice Savage's decision. The letter provided that the parties' counsel could submit memoranda on reconsideration on or before January 5, 2009. On October 27, 2008, the complainant's son informed the

**Commission of his mother's medical condition. On October 27, 2008, Commission Counsel confirmed that complainant's attorney was still representing the complainant, however on October 30, 2008, counsel's office indicated that they may file a motion to withdraw and a motion for extension of time.**

**J.J. Gregory and Sons v. RI Commission for Human Rights and Brenda Zeigler**

**The Commission found that J.J. Gregory and Sons discriminated against Brenda Zeigler because of her sex. J.J. Gregory and Sons filed an administrative appeal. Its appeal was amended to include an appeal of the Commission's Decision on Damages and Attorney's Fees. The Commission filed the administrative record with the Court on February 14, 2008. The filed a stipulation, the respondent's brief is due June 2, 2008 and the brief of the complainant and the Commission is due on July 1, 2008. The respondents' brief has not yet been filed. Respondents' counsel expects that their brief will be filed shortly. He will circulate a new stipulation relating to the due date for the briefs of the Commission and the complainant which will give us sixty (60) days to file the brief after his brief is filed. On September 2, 2008, the complainant wrote a letter to the respondent's counsel asking why the filing of the respondent's Brief has been delayed. On October 28, 2008, Commission counsel called both attorneys and left messages to call back. The complainant's counsel called back and left a message. He said that the respondent's counsel has enlisted another attorney to write the brief. When**

complainant's counsel saw the attorney charged with writing the brief, several weeks ago, he said that he would file the brief within the week. The respondent's attorney called and said the brief would be filed this week.

#### **Joint v. DeMarkey and Rhode Island Commission for Human Rights**

In this case, the Commission's decision for the complainant was reversed. Mr. Joint then sought attorney's fees under the Equal Access to Justice Act (EAJA). Justice Hurst decided that the Commission is subject to the EAJA, but that it was substantially justified in its actions and therefore Mr. Joint was not entitled to attorney's fees. The Order was entered on August 28, 2008 and the appeal period has expired.

#### **King v. City of Providence Police Dept.**

This is a case in which the Commission issued a decision finding that the City of Providence had denied Mr. King a position as a police officer because of his age. The Commission had not yet determined damages when the FUD's decision came down, so the Commission decision was not final and the respondent had the opportunity to have the case heard in Superior Court. The respondent elected to have the matter heard before the Superior Court. Ms. Hiatt has been subpoenaed to testify at the trial. The trial had been rescheduled to late September. The plaintiff was going to request another continuance; it has been granted. The complainant's attorney has told the Commission that there is a calendar call on September 14,

2007 and that the trial may be scheduled in September or October. Counsel now says that the trial will be scheduled at a later date. On October 23, 2007, Counsel for Mr. King said that the trial would probably take place during the week of January 21. Counsel Hiatt is under subpoena for the trial. The trial will not be held during the week of April 28; a new date has not yet been set.

#### **Laboy v. Stat Health Services**

Counsel is trying to locate respondent's officers in order to ensure compliance with the Commission Decision and Order.

#### **MHRH v. Rhode Island Commission for Human Rights and the Estate of Dr. John Satti**

MHRH has appealed the Commission decision that MHRH retaliated against Dr. Satti and discriminated against him on the basis of his age. The Commission will file the record of the Commission proceeding. MHRH filed its Brief on August 7, 2008. On October 21, 2008, the Commission filed the administrative record.

#### **RICHR v. Cardinale, et al.**

A complaint alleging a transfer of real estate in violation of the Uniform Fraudulent Transfers Act was filed against Norman Cardinale, Mary Cardinale, Newport Developments LLC, AEGIS Lending and MERS. Suit against Aegis and Mers was voluntarily dismissed. Default was entered against all remaining defendants but later removed by Court. Motions to default have been granted.

**Motions for Entry of Default will be filed shortly.**

**RICHR v. Cardinale, et al.**

**A complaint alleging a transfer of partnership interests in real estate in violation of the Uniform Fraudulent Transfers Act has been filed against defendants. Discovery commenced. Motions to compel will be filed.**

**RICHR on behalf of Donald Robinson v. Anthony Geruso, Flagship Management, et al.**

**A complaint against six defendants has been filed in Superior Court alleging racial discrimination in a failure to rent case that went probable cause. The complainant elected.**

**RICHR and Lovegrove v. Escolastico**

**RI judgment was obtained and sent to FL lawyer for collection. Action brought to foreclose mortgage on property Escolastico owns in FL. Waiting for Lovegrove to forward funds to FL counsel to begin Supplementary Proceedings against Escolastico.**

**RICHR and Morin v. Teofilo Silva, et al.**

**A complaint for enforcement was filed on 3-24-05. Service of the complaint will be made once respondent can be located.**

**RICHR and Zeigler v. Laura Sitrin, Finance Dir. of Newport**

**Case resolved. Commission must annually monitor City training. Notice sent to the city regarding the annual training. Training completed for 2007.**

### **Tucker v. Blue Cross**

**The complainant filed an administrative appeal of the Commission's finding of no probable cause. The administrative record was filed in Court. Nothing has been done since appeal filed in 2004.**